STATE OF MICHIGAN

DEPARTMENT OF LABOR & ECONOMIC GROWTH

OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX
Petitioner **File No. 91148-001**
v

Blue Cross Blue Shield of Michigan
Respondent
_____/

Issued and entered
this 1st day of October 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On July 22, 2008, XXXXX (Petitioner) filed a request for external review with the Commissioner of the Office of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq*. The initial request was incomplete. After the Petitioner provided additional information, the Commissioner accepted the request on August 15, 2008.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on August 6, 2008.

The issue in this external review can be decided by a contractual analysis. The contract here is the BCBSM *Community Blue Group Benefits Certificate* (the certificate). Rider *CBD $3000-NP Community Blue Deductible Requirement For Nonpanel Services* and Rider *CB-CSR Community Blue -- Cost Sharing Requirements* also apply. The Commissioner reviews contractual

issues pursuant to MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II
FACTUAL BACKGROUND

Under the terms of the Petitioner's health care coverage, there is no deductible when covered services are received from "panel providers," i.e., certain health care professionals and facilities who have agreed to provide services to BCBSM members under the certificate. Services received from nonpanel providers are generally subject to a deductible.

The Petitioner lives in XXXXX. On March 11, 2008, the Petitioner's doctor requested approval from BCBSM to refer the Petitioner to XXXXX, MD, in XXXXX, a nonpanel provider. On March 18, 2008, BCBSM received a request to waive the nonpanel deductible and copayment sanctions for Dr. XXXXX's care. By letter dated March 19, 2008, BCBSM advised the Petitioner that the request was denied.

On April 18, 2008, Dr. XXXXX performed arthroscopic surgery on the Petitioner's right shoulder. BCBSM approved $1,412.50 for this care. Since Dr. XXXXX participates with Blue Cross Blue Shield of Wisconsin, he accepted BCBSM's approved amount as payment in full. However, since Dr. XXXXX is not part of the Petitioner's PPO panel, BCBSM applied the entire $1,412.50 to the nonpanel deductible and no payment was made to the surgeon, leaving the Petitioner responsible for the entire $1,412.50.

The Petitioner appealed BCBSM's decision to apply its approved amount to the nonpanel deductible, asking BCBSM to waive the nonpanel sanctions. BCBSM held a managerial-level conference on June 5, 2008, and issued a final adverse determination dated June 6, 2008.

III
ISSUE

Did BCBSM correctly deny approval for the Petitioner's referral to Dr. XXXXX which would have waived the nonpanel deductible?

IV
ANALYSIS

Petitioner's Argument

The Petitioner says that her initial shoulder surgery (right rotator cuff repair) in August 2007 in XXXXX was not successful; she had continuing pain even after therapy and injections. She says her general health was affected by the unresolved pain and lack of sleep and when the surgeon could not diagnose the cause of the pain even after an MRI, she sought a surgeon outside the PPO network who could treat her, in part because she did not want to use a surgeon in the same practice as the original surgeon who had been unable to diagnose her pain.

The Petitioner believes that BCBSM should waive any nonpanel deductible and copayment and pay its approved amount for her surgery in Wisconsin.

BCBSM's Argument

BCBSM says that the certificate's riders amend the certificate and provide for three circumstances where nonpanel cost sharing requirements are waived for treatment outside the state of Michigan: 1) with a BCBSM-approved referral from a Michigan PPO panel provider; 2) for treatment of an accidental injury or a medical emergency; or 3) for covered services received when there is no PPO panel provider.

BCBSM said it could not waive the $3,000.00 per person out-of-network deductible requirements because 1) it did not approve a referral to the nonpanel provider from a PPO panel provider; 2) the Petitioner's care was not provided on an emergency basis; and 3) there were orthopedic surgeons available in the Upper Peninsula who are on BCBSM's PPO panel. BCBSM noted that there are PPO panel surgeons who are located closer to the Petitioner's home than Dr. XXXXX.

BCBSM believes that it appropriately denied the Petitioner's nonpanel and out-of-state referral request.

Commissioner's Review

The BCBSM rider *CBD $3000-NP Community Blue Deductible Requirement For Nonpanel Services* indicates that the Petitioner must pay a $3,000.00 deductible each calendar year for most covered services from nonpanel providers. Both riders say that the nonpanel deductible will apply unless the services fall under one of the three circumstances described above. However, in the Petitioner's case, none of those circumstances are present.

The Commissioner is sympathetic to the Petitioner's situation. She decided to receive care from a nonpanel doctor in XXXXX in whom she has confidence. However, she did not have a BCBSM-approved referral to Dr. XXXXX, the care was not treatment for an emergency or accidental injury, and BCBSM said it has numerous orthopedic surgeons in the Upper Peninsula who are part of BCBSM's PPO panel.

Under the certificate and its riders, covered services from nonpanel providers are subject to the nonpanel deductible. The Commissioner finds no basis in this record for requiring BCBSM to waive the Petitioner's nonpanel cost sharing requirements for the treatment she received from Dr. XXXXX

V
ORDER

BCBSM's final adverse determination of June 6, 2008, is upheld.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.